

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Edward Tsigel	Team: Squad #4	CCRB Case #: 201905037	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 06/03/2019 8:00 PM	Location of Incident: Resort World Casino	Precinct: 106	18 Mo. SOL 12/3/2020	EO SOL 7/20/2021	
Date/Time CV Reported Mon, 06/10/2019 4:16 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 06/10/2019 4:16 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LSA Kevin To	00000	920902	SRG
2. SDS Frank Burns	02906	923596	DBMN OP
3. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Steven Cruver	11884	950250	SRG

Officer(s)	Allegation	Investigator Recommendation
A.SDS Frank Burns	Abuse: Sergeant Frank Burns stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.SDS Frank Burns	Abuse: Sergeant Frank Burns frisked § 87(2)(b)	
C.SDS Frank Burns	Abuse: Sergeant Frank Burns frisked § 87(2)(b)	
D.LSA Kevin To	Abuse: Lieutenant Kevin To searched § 87(2)(b)	
E.SDS Frank Burns	Abuse: Sergeant Frank Burns searched the vehicle in which § 87(2)(b) was an occupant.	
F. An officer	Abuse: An officer damaged § 87(2)(b) property.	
§ 87(4-b), § 87(2)(g)		

Case Summary

On June 10, 2019, § 87(2)(b) filed this complaint on the CCRB website on his own behalf and on behalf of his brother § 87(2)(b).

On June 3, 2019, at approximately 8:00 PM, at the Resort World Casino in Queens, Sergeant Frank Burns, of the Citywide Task Force, stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants (**Allegation A - Abuse of Authority - § 87(2)(b)**). § 87(2)(b) and § 87(2)(b) were frisked (**Allegations B and C - Abuse of Authority - § 87(2)(g)**). Lieutenant Kevin To allegedly searched § 87(2)(b) (**Allegation D - Abuse of Authority - § 87(2)(g)**). Sgt. Burns searched § 87(2)(b) vehicle (**Allegation E - Abuse of Authority - § 87(2)(g)**). § 87(2)(b) alleged that an officer damaged his vehicle (**Allegation F - Abuse of Authority - § 87(2)(g)**).

§ 87(4-b), § 87(2)(g)

No arrests were made, or summons issued as a result of this incident.

The CCRB received three Body Worn Camera (BWC) videos of the incident (BR 09-11), seven security camera videos (IA 67-73), and four photos from § 87(2)(b) (IA 43-46).

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Frank Burns stopped the vehicle in which

§ 87(2)(b) and § 87(2)(b) were occupants.

Allegation (B) Abuse of Authority: Sergeant Frank Burns frisked § 87(2)(b)

Allegation (C) Abuse of Authority: Sergeant Frank Burns frisked § 87(2)(b)

Allegation (D) Abuse of Authority: Lieutenant Kevin To searched § 87(2)(b)

Allegation (E) Abuse of Authority: Sergeant Frank Burns searched the vehicle in which

§ 87(2)(b) was an occupant.

On June 3, 2019, between 6 P.M. and 7 P.M., § 87(2)(b) (BR 01) and his brother § 87(2)(b) (BR 02) arrived at Resort World Casino in a vehicle and parked it in the parking lot. § 87(2)(b) was the driver, and § 87(2)(b) was the front passenger. § 87(2)(b) and § 87(2)(b) exited their vehicle and walked to the casino.

At approximately 8 P.M., § 87(2)(b) and § 87(2)(b) exited the casino and returned to their vehicle. As they attempted to pull out of the parking spot, an unmarked police vehicle pulled up behind them and blocked them in the parking spot. An additional unmarked police vehicle arrived simultaneously. A group of officers exited the police vehicles and approached § 87(2)(b) and § 87(2)(b) vehicle. § 87(2)(b) and § 87(2)(b) were told to exit their vehicle. § 87(2)(b) and § 87(2)(b) exited the vehicle. A White male officer patted down and handcuffed § 87(2)(b) and Sergeant Janette Cruz patted down and handcuffed § 87(2)(b). § 87(2)(b) stated that Lieutenant Kevin To reached into his back-right pant pocket and removed his wallet. § 87(2)(b) and § 87(2)(b) were escorted to the rear of their vehicle. Officers then searched their vehicle. After their vehicle was searched, Lt. To told § 87(2)(b) and § 87(2)(b) that someone witnessed § 87(2)(b) place an unspecified object under the driver's seat, the object was not found as a result of the search, and that they were free to go. § 87(2)(b) and § 87(2)(b) subsequently left the casino in their vehicle.

Sergeant Frank Burns (BR 03) stated that he was in the parking lot of Resort World Casino at approximately 6:45 P.M. and looked for parking in his personal vehicle, a black SUV Dodge Durango. Sgt. Burns was assigned paid detail at the casino which started at 7 P.M. While looking for parking, Sgt. Burns observed § 87(2)(b) stand outside of a vehicle and look around the vehicle. § 87(2)(b) then reached into his waistband, pulled out an object, and placed the object under the driver's seat of the vehicle. § 87(2)(b) then locked his vehicle and went to the casino.

Sgt. Burns was approximately fifty feet away when he observed § 87(2)(b). Sgt. Burns did not see what the object was. Sgt. Burns could not describe the object. However, Sgt. Burns believed the object was a firearm because he considered § 87(2)(b) behavior of looking around his own vehicle, to be suspicious, and due to his experience with prior firearm arrests.

Sgt. Burns parked his vehicle, went to the security room of the casino, and reviewed security camera footage to see if he could determine what the object was. He was unable to determine what the object was after he watched the security footage.

Sgt. Burns called Deputy Inspector William Kivlehan, who was in charge of City-Wide Anti-Crime, on his cellphone and requested back up to the scene to stop § 87(2)(b) and § 87(2)(b). DI Kivlehan told Sgt. Burns to contact Lt. To. Sgt. Burns (BR 03) called Lt. To and told him that he witnessed someone place a firearm in their own vehicle. Sgt. Burns did not remember if he called Lt. To on his cell phone, or through a radio. Lt. To, Sergeant Janette Cruz (Inactive), and Police Officer Steven Cruver responded to Sgt. Burns' backup request and they arrived approximately one hour later. While he waited, Sgt. Burns requested that casino security personnel keep track of § 87(2)(b) and § 87(2)(b) inside the casino and provide him updates on their whereabouts. Sgt. Burns also approached § 87(2)(b) and § 87(2)(b) vehicle in the parking lot and looked into it through the windows, which did not reveal any contraband.

Lt. To (BR 04) and PO Cruver (BR 05) arrived at the casino and spoke with Sgt. Burns regarding the alleged firearm. At approximately 8 P.M. casino security personnel notified Sgt. Burns (BR 03) that § 87(2)(b) and § 87(2)(b) were leaving the casino. § 87(2)(b) and § 87(2)(b) returned to their vehicle and entered it. As § 87(2)(b) and § 87(2)(b) pulled out of their parking spot, Lt. To, Sgt. Cruz, and PO Cruver, who were in an unmarked grey sedan, pulled up behind them and blocked them in the parking spot. Sgt. Burns pulled up to § 87(2)(b) vehicle in another lane of the parking lot. Lt. To and PO Cruver exited their vehicle, approached the driver's side of the vehicle, and told § 87(2)(b) to exit the vehicle. Sgt. Burns and Sgt. Cruz approached the passenger's side of the vehicle and told § 87(2)(b) to exit the vehicle. Lt. To patted down and handcuffed § 87(2)(b). Sgt. Burns patted down and handcuffed § 87(2)(b). Lt. To did not see any bulges on § 87(2)(b) person. Sgt. Burns did not see any bulges on § 87(2)(b) person. No contraband was found as a result of the pat downs. Lt. To (BR 04) denied that he entered any of § 87(2)(b) pockets or removed any items from his pockets. § 87(2)(b) and § 87(2)(b) were escorted to the rear of their vehicle.

Sgt. Burns and PO Cruver searched the entire interior of § 87(2)(b) vehicle, including the center console, and the glove box. A pocketknife and a burnt marijuana cigarette were found as a result of the search. There was no firearm in the vehicle. PO Cruver (BR 05) stated that § 87(2)(b) and § 87(2)(b) were not issued a summons for the marijuana because discretion was used. He did not know which officer made the decision to not issue a summons.

At 0:00 of Video 7 (BR 07), § 87(2)(b) and § 87(2)(b) arrive to the casino parking lot in a black sedan and enter a parking spot. At 0:50, Sgt. Burns (BR 03) identified himself in the black SUV driving past the parked black sedan. Between 0:50 and 1:57, § 87(2)(b) and § 87(2)(b) exit their vehicle and walk to the casino. Video 6 (BR 06) shows a different perspective of Video 7.

From 0:00 to 0:40 of Video 1 (BR 08), § 87(2)(b) and § 87(2)(b) walk to and enter their vehicle. The vehicle turns on and begins to back up out of the parking spot. At 0:40, an unmarked grey sedan and an unmarked black SUV initiate a vehicle stop. At 0:52, Sgt. Burns (BR 03) identified himself as the individual who exited the driver's seat of the unmarked black SUV. Lt. To and PO Cruver approach from the driver's side, remove § 87(2)(b) from the vehicle, and handcuff him. Sgt. Burns and Sgt. Cruz approach from the passenger's side, remove § 87(2)(b) from the vehicle, and handcuff him. From 0:50 to 2:10, Lt. To pats down § 87(2)(b) and Sgt. Burns pats down § 87(2)(b). Both § 87(2)(b) and § 87(2)(b) are escorted to the rear of their vehicle. Between 2:10 and 6:30, Sgt. Burns searches the driver's side of the vehicle and PO Cruver searches the passenger's side of the vehicle.

At 0:00 of Lt. To's BWC video 1 (BR 09), Lt. To pats down § 87(2)(b). Between 0:45 and 5:00, Sgt. Burns and PO Cruver search the vehicle. Between 0:10 and 0:35 of PO Cruver's BWC video (BR 11), Sgt. Burns pats down § 87(2)(b). Between 0:55 and 2:43, PO Cruver and Sgt. Burns search the entire vehicle. At no point throughout any of the BWC footage (BR 09-11), does Lt. To or any other officer enter § 87(2)(b) pockets.

The stop report (BR 12) confirms that a stop, frisk, and vehicle search was conducted, which resulted in a knife and marijuana cigarette found in the vehicle. The stop report states that

there was no search of persons conducted during the incident.

As per People v. May, 81 N.Y.2d 725 (1992), (BR 13) an officer may only stop a vehicle to investigate criminal activity when he has a reasonable suspicion that its occupants have been engaged, are presently engaged, or are about to engage in conduct in violation of the law.

As per People v. Batista, 88 N.Y.2d 650 (1996), (BR 14) in order to frisk someone, an officer must have knowledge of some fact or circumstance that supports a reasonable suspicion that the suspect is armed or poses a threat to safety.

As per People v. Hernandez, 238 A.D.2d 131 (1997), (BR 15) there must be probable cause that a vehicle contains contraband, weapons, or evidence of a crime to justify a warrantless search of the vehicle.

Sgt. Burns requested back up and provided the responding officers with information that confirmed the existence of a firearm, even though he did not have probable cause to believe that a firearm existed. The responding officers acted based on the information they were provided by Sgt. Burns, that there was a firearm; therefore, their actions are pled against Sgt. Burns.

Sgt. Burns stated that he observed § 87(2)(b) reach into his waist band and look around his own vehicle, and this behavior led him to believe that there was a firearm in § 87(2)(b) and § 87(2)(b) vehicle. Sgt. Burns did not see § 87(2)(b) with a firearm, nor did he see what object § 87(2)(b) placed in his vehicle. Sgt. Burns looked through the vehicle's windows and looked at casino security footage, and was unable to determine whether there was a firearm inside the vehicle.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (F) Abuse of Authority: An officer damaged § 87(2)(b) property.

§ 87(2)(b) (BR 01) and § 87(2)(b) (BR 02) stated that after the incident, they noticed that the seat belt buckle in the rear passenger seat of § 87(2)(b) vehicle was missing and that the fabric of the seat had been pulled back (BR 16). They stated that the rear passenger seat was not damaged prior to the incident. Neither § 87(2)(b) nor § 87(2)(b) ever saw which officer caused damage to the vehicle.

Sgt. Burns (BR 03), Lt. To (BR 04), and PO Cruver (BR 05) all denied that they damaged any part of § 87(2)(b) vehicle. They all stated that they never saw another officer cause damage nor were any of them ever made aware of any damage that the vehicle sustained.

As mentioned before, Sgt. Burns and PO Cruver were the only officers who searched § 87(2)(b) vehicle. At no point throughout any of the BWC footage (BR 09-11) is either officer seen damaging any part of the vehicle nor is there a clear visual of the seat belt buckle.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 19).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 20).
- Sergeant Frank Burns has been a member of service for twenty years and has been a subject in ten other CCRB complaints and twenty-six allegations, of which one was substantiated.
 - 201807156 involved a substantiated allegation of interference with a recording against Sgt. Burns. The board recommended command level discipline and the NYPD has not yet imposed discipline. § 87(2)(g)
- Lieutenant Kevin To has been a member of service for twenty-two years and has been a subject in nine other CCRB complaints and seventeen allegations, none of which were substantiated.

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation.
- § 87(2)(b) and § 87(2)(b) filed a notice of claim with the City of New York claiming false imprisonment, deprivation of civil rights, and negligent and intentional infliction of emotional distress and are seeking \$500,000 as redress (BR 21). There is no 50H hearing scheduled.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (BR 22).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (BR 23).

Squad No.: 4

Investigator:	<u>Edward Tsigel</u>	<u>Investigator Edward Tsigel</u>	<u>5/21/2020</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Raquel Velasquez</u>	<u>IM Raquel Velasquez</u>	<u>5/24/2020</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date